

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Ervin Moye,

Petitioner,

v.

Warden Travis Bragg,

Respondent.

2016 MAR -7 P 12:33
Civil Action No.: 9:15-cv-1726-RMG

ORDER

This matter comes before the Court on the Report & Recommendation (R & R) of the Magistrate Judge (Dkt. No. 15). For the reasons below, the Court adopts the R & R as the order of the court, grants Respondent's motion for summary judgment (Dkt. No. 10), and dismisses the case with prejudice.

Background

Petitioner is a federal inmate incarcerated at the Federal Correctional Institute in Bennettsville, South Carolina. On November 13, 2012, he pled guilty to several state charges in Florida. (Dkt. No. 1-1). Petitioner was subsequently arrested on federal charges on January 16, 2013. (Dkt. No. 1-1 at 17). At the time of his arrest, Petitioner had not been sentenced for his state charges. Petitioner has still not received a sentence for his state charges.

Pursuant to 28 U.S.C. § 2241, Petitioner filed a *pro se* challenge to a detainer lodged against him by Florida. (Dkt. No. 1). Specifically, Petitioner seeks the dismissal of his charges pursuant to the Interstate Agreement on Detainers ("IAD") because Florida "refus[ed] to sentence [him] in a timely manner." (Dkt. No. 1 at 3).

Respondent filed a motion for summary judgment (Dkt. No. 10), and Petitioner filed a response in opposition (Dkt. No. 13). The Magistrate Judge issued an R & R recommending that

this Court grant the motion for summary judgment and dismiss the case with prejudice. (Dkt. No. 15). The Petitioner did not file any objections to the R & R.

Legal Standard

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). This Court is charged with making a *de novo* determination of those portions of the R&R to which specific objection is made. Additionally, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). This Court may also “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

Where the plaintiff fails to file any specific objections, “a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation,” *see Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (internal quotation omitted), and this Court is not required to give any explanation for adopting the recommendation of the Magistrate Judge, *Camby v. Davis*, 718 F.2d 198 (4th Cir. 1983).

Discussion

The IAD “is a compact entered into by 48 States, the United States, and the District of Columbia to establish procedures for resolution of one State's outstanding charges against a prisoner of another State” *New York v. Hill*, 528 U.S. 110, 111 (2000). If certain required prerequisites are met and a waiver or continuance is not obtained, the failure to conduct a trial within 180 days can result in a criminal indictment being dismissed. *Id.* at 112. However, the


IAD applies only to “criminal charges pending against a prisoner.” *Carchman v. Nash*, 473 U.S. 716, 725 (1985).

Here, Petitioner claims that Florida has violated the IAD by failing to sentence him subsequent to his 2012 guilty plea. A delay in sentencing does not impair a defendant’s ability to defend against charges at trial, and there is no constitutional right to a speedy sentencing hearing after guilt has been determined. *Carchman*, 473 U.S. at 732–33. Because Peititioner has already pled guilty to the charges, the IAD does not afford him any relief with respect to his sentencing.

Conclusion

After reviewing the record, the applicable law, and the Magistrate Judge’s thorough and thoughtful R & R, the Court **ADOPTS** the R & R as the order of the Court, **GRANTS** Respondent’s motion for summary judgment (Dkt. No. 10), and dismisses the case with prejudice.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

March 7, 2016
Charleston, South Carolina